



State of Louisiana

BOBBY JINDAL
GOVERNOR

May 5, 2014

Colonel Richard L. Hansen
District Commander
U.S. Army Corps of Engineers, New Orleans District
Executive Office
P.O. Box 60267
New Orleans, LA 70160-0267

Dear Colonel Hansen:

This correspondence is intended to convey CPRA's comments on Programmatic Individual Environmental Report # 37 (PIER 37), prepared by the U.S. Army Corps of Engineers (USACE), Mississippi Valley Division, New Orleans District (CEMVN) to assess the compensatory mitigation required due to wetland damages incurred during the construction of the West Bank and Vicinity (WBV) 100-year Hurricane and Storm Damage Risk Reduction System (HSDRRS). Because of the extensive destruction caused by Hurricanes Katrina and Rita in 2005, the accelerated completion of the WBV HSDRSS project was approved by Congress in 2006.

Due to the state of emergency created by Hurricanes Katrina and Rita and the need for expedited construction to reduce the imminent and continuing threat to life and property posed by the weakened and damaged hurricane and storm damage risk reduction system, the White House Council on Environmental Quality (CEQ) allowed CEMVN to deviate from the traditional National Environmental Policy Act (NEPA) compliance process (environmental assessment (EA) or Environmental Impact Statement (EIS)). The NEPA alternative arrangements allowed USACE to analyze the direct and indirect impacts to the natural and human environment in Individual Environmental Reports (IERs) and analyze the cumulative effects, including compensatory wetland mitigation, in a later Comprehensive Environmental Document (CED) and Programmatic IERs; it's our understanding that cumulative impacts will be analyzed within a future supplemental CED. In the Federal Register notice dated March 13, 2007, CEMVN stated its "intent to implement compensatory mitigation as early as possible in the process once unavoidable impacts have been determined." Likewise, Title 33 C.F.R. 332.3 states that "Implementation of the compensatory mitigation project shall be, to the maximum extent practicable, in advance of or concurrent with the activity causing the authorized impacts. The district engineer shall require, to the extent appropriate and practicable, additional compensatory mitigation to offset temporal losses of aquatic functions that will result from the permitted activity". The construction of the improvements to WBV began in 2007 and to this date, no compensatory mitigation has been performed. In addition, compensatory wetland mitigation has not been completed to date for pre-Katrina HSDRRS WBV construction activities. Delays in the implementation of compensatory mitigation substantially increases the State's share of the cost.

The methodology used in the determination of WBV wetland impacts is unclear to CPRA. The table in the IER Discrepancy Impact Memo in Appendix B of the PIER cites U.S. Fish and Wildlife Service (USFWS) Coordination Act Reports of various years (2009-2012). While we are aware that USFWS used the wetland value assessment (WVA) method to determine wetland impacts, little else is known. Were the wetland impacts solely determined using aerial photography or was an on-the-ground impact assessment used? The PIER contains discrepancies in calculations as well. For example, both Tables 1-3 and 2-4 present impacts by habitat type along with acreage required to mitigate those impacts to those habitats. The total impacts shown in Table 1-3 are 125 AAHUs lower than those presented in Table 2-4. Likewise, the impacts and required acreages by habitat type presented in these two tables do not correspond. CPRA requests a full explanation of wetland impact calculations accompanied by maps showing impacts to protected side and flood side habitat types by reach. These maps should also include a clear demarcation of fully federal vs. cost-shared compensatory wetland mitigation responsibilities by reach.

In a letter to Governor Jindal on March 19, 2010, Assistant Secretary of the Army Jo Ellen Darcy stated "As noted earlier, we are committed to identifying large-scale projects that will mitigate for the impacts caused by the HSDRSS program and provide the most effective benefits to coastal and ecosystem restoration. Moreover, the Corps will develop HSDRSS mitigation plans in those high-priority areas that are also identified within the state master plan, specifically the West Bank and Lake Pontchartrain areas". It is the opinion of CPRA that USACE has not met these commitments. The projects included in the Tentatively Selected Plan (TSP) are neither (a) large-scale in nature nor (b) within areas identified in the State Master Plan.

The March 31, 2008 Final Compensatory Mitigation Rule issued jointly by the Environmental Protection Agency (EPA) and USACE requires a watershed approach in order to sustain aquatic resource functions within the watershed. A watershed approach considers how the types and locations of compensatory mitigation projects function over time in a changing landscape and should consider habitat loss or conversion trends as well as sources of watershed impairment. The watershed in question for this mitigation effort is the Barataria Basin, one of the most imperiled and rapidly eroding watersheds in the United States.

Title 33 C.F.R. 332.3(c) requires the district engineer to use a watershed approach for compensatory mitigation. It further states, "in cases where the district engineer determines that an appropriate watershed plan is available, the watershed approach should be based on that plan." A consideration under 33 C.F.R. 332.3(c)((2)(iv) is that "planning efforts should identify and prioritize aquatic resources restoration, establishment, and enhancement activities, and preservation of existing aquatic resources that are important for maintaining or improving ecological functions of the watershed." The 2012 State Master Plan for a Sustainable Coast (2012 Coastal Master Plan) prioritizes a suite of projects to restore aquatic resources and both maintain and improve ecological functions in the Barataria Basin. The suite of projects identified within the Barataria Basin in the 2012 Coastal Master Plan focus on the creation of brackish marsh and the diversion of sediment/nutrient-laden water from the Mississippi River.

The USACE did evaluate two project alternatives put forward by the State that coincide with the 2012 Coastal Master Plan. These projects were screened out based on high costs relative to those alternatives selected by USACE in the Alternatives Evaluation Process (AEP) and previously identified as the WBV TSP. The basis for this analysis of costs is not clear, as CPRA has not been allowed to review the cost estimates developed by USACE.

The State also put forward an alternative project identified in the 2012 Coastal Master Plan that would create brackish marsh as mitigation. USACE indicated that going forward with this alternative would require demonstration that (a) in-kind mitigation of swamp habitat is not possible, or (b) WRDA 2007 Section 2036(a) must be changed by Congress. After review, it is not clear where in WRDA 2007 it is stated that swamp impacts must be mitigated in-kind. The likelihood of mitigation success is a criterion stated in all guiding legislation. With this in mind, marsh has been successfully created numerous times in the Barataria Basin. The projects identified in the TSP utilize less established restoration techniques and as such have a higher risk of failure.

One of the mitigation projects selected in the TSP calls for the degradation of existing agricultural land for the creation of BLH and swamp habitat. This requires the removal of roughly 1M cubic yards of material solely for the purpose of reducing elevation. Given the high rates of subsidence and land loss we are facing along our coast, CPRA does not agree with reducing the elevation of land for the purposes of restoration or mitigation.

In addition to the above concerns, CPRA generally has concerns with the monitoring requirements/mitigation success criteria set forth in the PIER. For example, for BLH and Swamp habitat types, these guidelines call for maintaining exotic species below 5% of total cover; this requirement will be difficult to attain. These concerns also apply to O&M; it is unclear what CPRA's O&M responsibilities will entail for the various habitat types and how the mitigation success criteria will affect these responsibilities. The required duration of O&M is also unclear.

In summary, CPRA does not concur with the majority of USACE's proposed non-park/non-404(c) compensatory mitigation plan for WBV wetland impacts. We do concur with the purchase of credits from a wetland mitigation bank to fulfill compensatory wetland mitigation requirements to protected side BLH-Wet/Dry habitats. We request a presentation on the HSDRRS WBV compensatory wetland mitigation at the May 21, 2014 meeting of the CPRA Board.

Coastal Protection and Restoration Authority Board

Wed, May 21, 2014 -- 09:30 a.m.

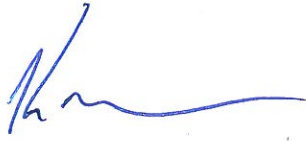
LaSalle Building

LaBelle Room

Baton Rouge, LA 70802

Contact: 225-342-3968

Respectfully,

A handwritten signature in blue ink, appearing to read 'K. Graham', with a long horizontal flourish extending to the right.

Kyle Graham
Executive Director, CPRA